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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 816

GULF OIL CORPORATION, *Petitioner*

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 715, AFL-CIO, *Respondent*

GULF OIL CORPORATION'S PETITION FOR REHEARING OF ITS APPLICATION FOR WRIT OF CERTIORARI

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Comes Gulf Oil Corporation and files this, its petition for rehearing of its application for writ of certiorari and respectfully points out to this Honorable Court that certiorari should be granted on the following ground in addition to those heretofore presented.

The Court of Appeals has decided this case in a way in conflict with the decisions of other United States Courts of Appeals on the same subject matter. The Court of Appeals recognized that its opinion in *Machinist Lodge No. 12 vs. Cameron Iron Works, Inc.*, 257 F. 2d 467, was so in conflict, for it stated in that opinion (footnote 14, page 472):

> "The following cases held that the jurisdiction of the Board in the field of unfair labor practice would pre-empt state agencies or private arbitrators from acting: NLRB v. Wagner Iron Works,

7th Cir. 1955, 220 F. 2d 126; McAmis v. Panhandle Eastern Pipe Line Co., Mo. Ct. App. 1954, 273 S.W. 2d 789."

As the Court of Appeals cites the *Cameron Iron Works* decision as authority for its opinion in this case (R. 102), this case is in conflict with the decisions of the other United States Courts of Appeals on the same subject matter.

In the *Cameron Iron Works* case, the court holds that there is a distinction between contract provisions and matters committed exclusively to the Board. However, Section 10(a) of the National Labor Relations Act, as amended, recognizes no such distinction. This claimed distinction has also been rejected by various decisions of other courts of appeals. For example, in *National Labor Relations Board vs. Walt Disney Productions*, 146 F. 2d 44 (9th Circuit), the court holds contrary to the 5th Circuit when it says:

> "The Act itself contemplates a continuing jurisdiction by the Board over employer-employee relationships, for Section 160 (a) includes a provision that the Board's power over unfair labor practices 'shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.' Clearly, agreements between private parties cannot restrict the jurisdiction of the Board."

And in *National Labor Relations Board vs. International Union*, 194 F. 2d 698 (7th Cir.), the Court says:

> "The Board's exclusive function in this field

> may not be displaced by action before State agencies or by arbitration. . . ."

In *National Labor Relations Board vs. Wagner Iron Works*, 220 F. 2d 126 (7th Cir.), the court states:

> "Furthermore, arbitration provisions in a bargaining agreement cannot oust the Board's jurisdiction to prevent unfair labor practices."

Since the Fifth Circuit is in conflict with other circuits on the question as to whether, after the National Labor Relations Board has actually assumed and exercised jurisdiction of an employee's discharge under allegations which may constitute an unfair labor practice, the United States District Court has jurisdiction to proceed to enforce arbitration under Section 301 of the Labor Management Relations Act as a violation of a collective bargaining agreement.

If the Court of Appeals decision in this case is permitted to stand, then we would have the legally indefensible situation of litigants having the right to twice hear each dispute. As this case now stands, the NLRB has found that by refusing to arbitrate the Cantner discharge petitioner has not been guilty of an unfair labor practice. By implication, the Board found that the contract did not require arbitration. If the District Court should hold otherwise, and require arbitration, then the effectiveness of Board unfair labor practice decisions would be impaired to the detriment of labor-management peace, and the exclusive nature of the Board's jurisdiction would be diminished.

This would create an intolerable situation and one

which this Court should not permit to occur, and the conflict which now exists between the circuits on this issue of national importance should be resolved by this Court granting petitioner's application for writ of certiorari.

It is accordingly urged that this petition for rehearing of petitioner's application for writ of certiorari to review the judgment of the court below should be granted.

Respectfully submitted,

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I, CHAS. J. MURRAY, counsel of record for Gulf Oil Corporation, petitioner herein, hereby certify that on the 21 day of May, 1959, I served copies of the foregoing petition for rehearing of petitioner's application for writ of certiorari on Sam Houston Clinton, Jr., counsel of record for respondent, International Union of Operating Engineers, Local No. 715, AFL-CIO, at his office, 402 West 13th Street, Austin 1, Texas, by depositing the same in a United States mailbox with first class postage prepaid in an envelope addressed to such counsel of record for respondent at said post office address.

I further certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that such petition is restricted to substantial grounds available to petitioner not previously presented.

CHAS. J. MURRAY